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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/722,949	11/27/2000	Frank M. Richmond	68050	5029

22242 7590 08/23/2004

FITCH EVEN TABIN AND FLANNERY  
120 SOUTH LA SALLE STREET  
SUITE 1600  
CHICAGO, IL 60603-3406

EXAMINER

GLESSNER, BRIAN E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/722,949

Applicant(s)

RICHMOND, FRANK M.

Examiner

Brian E. Glessner

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 April 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 35,36 and 38-86 is/are pending in the application.
- 4a) Of the above claim(s) 39,43-47,57,61-65 and 72 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 53-56,58-60 and 66-86 is/are allowed.
- 6) ☒ Claim(s) 35,36,38,40,41,48-52,71 and 73 is/are rejected.
- 7) ☒ Claim(s) 42 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The following office action is in response to the amendment filed on April 15, 2004.

Claims 35, 36, and 38-86 are pending in the application. Claims 39, 43-47, 57, 61-65 and 72 are non-elected claims and are withdrawn from consideration.

#### ***Claim Rejections - 35 USC § 102***

3. Claims 35, 36, 38, 40, 41, 48, 51, 71 and 73 stand rejected under 35 U.S.C. 102(e) as being anticipated by Reicherts (4,449,338).

In regard to claims 35, 36, 38, 40, 41 and 73, Reicherts discloses an apparatus for installing building materials comprising a first surface 1 (see examiner's attachment) comprising a fastener comprised of a fastener opening and a fastener component 15, the first surface attached to a resting surface 2, at least one guide surface 3 continuous with the resting surface and extending away from a plane of the resting surface, at least one target surface 4 continuous with the guide surface and extending away from a plane of the resting surface, and a second resting surface 5. The fastener is spaced apart from the resting surface.

In regard to claim 48, Reicherts discloses the claimed invention, wherein the device further comprises a positioning feature 20.

In regard to claim 51, Reicherts discloses the claimed invention, wherein the apparatus for installing building material is made from a material selected from the group consisting of wood, metal, plastic, and combinations thereof. Reicherts discloses that the material could be metal or plastic such as polyethylene or polystyrene or nylon, column 3, lines 52-54.

In regard to claim 71, Reicherts discloses the claimed invention, wherein the second resting surface is parallel to or nearly parallel to the target surface.

In regard to claim 41, Reicherts discloses the claimed invention, further comprising a second at least one guide surface 6 continuous with the second resting surface and extending away from a plane of the second resting surface.

***Claim Rejections - 35 USC § 103***

4. Claim 49 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Reicherts (4,449,338) in view of Burgess (5,366,329).

In regard to claim 49, Reicherts discloses the claimed invention except for disclosing the use of a “one material thickness” spacer block. Burgess teaches that it is known to use a “one material thickness” spacer block 5b to provide a space for a drywall panel to be inserted. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate said height block or spacer into Reicherts’ invention, because the spacer will provide additional clearance between the apparatus and the studs if needed. Further, the examiner contends that the use of spacers where needed is capable of being determined by one having ordinary skill in the art.

5. Claims 50 and 52 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Reicherts (4,449,338) in view of Guilmette (5,617,698).

In regard to claims 50 and 52, Reicherts discloses the claimed invention, except for the use of a tee support or adjustable positioning device. Guilmette discloses the use of a tee shaped adjustable positioning device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate said device into Reicherts’ invention, because the device will aid the user in placing the panels. The device will help the user to hold the panel until the at least one apparatus for installing building materials is moved into position to hold the

panel. Also, the positioning device could be used as a safety device if one or more of the apparatus for installing building materials failed.

***Allowable Subject Matter***

6. Claim 42 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
7. Claims 53-56, 58-60, 66-70 and new claims 74-86 are allowed.

***Response to Arguments***

1. Applicant's arguments filed 4/15/04 have been fully considered but they are not persuasive.

The applicant argues that the references used in the rejections do not disclose the claimed features of the applicant's claims. The examiner respectfully disagrees. The examiner has clearly pointed out all of the claimed elements of applicant's claims in the above rejections. The examiner has even provided an examiner's attachment to the previous office action so that the examiner's interpretation of the claims was as clear as possible. Further, the applicant has merely stated that the references used in the rejections do not disclose the claimed surfaces. However, the applicant has not disclosed why the surfaces defined by the examiner do not meet the claimed limitations. As long as the prior art surfaces are capable of performing the functions inferred to by the name of the surface, they meet the claimed limitations.

***Conclusion***


2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Glessner whose telephone number is 703-305-0031. The examiner can normally be reached on Monday-Friday 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Brian E. Glessner  
Primary Examiner  
Art Unit 3635

B.G. 8/17/04